

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Anderson County

Honorable Frank R. Addy, Circuit Court Judge

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STANLEY S. DAVIS,

**ORIGINAL**  
**RECEIVED**  
OCT 26 2016  
S.C. SUPREME COURT  
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000736

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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The PCR court erred in not finding plea counsel ineffective for failing to insure that Petitioner’s guilty plea was voluntarily entered because plea counsel failed to request a Blair hearing to determine if Petitioner Davis should undergo a mental evaluation for competency and criminal responsibility because Petitioner had a history of mental illness and because he was charged with the murder of his mother by burning. ....6

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ISSUE PRESENTED

Did the PCR court err in not finding plea counsel ineffective for failing to insure that Petitioner's guilty plea was voluntarily entered because plea counsel failed to request a Blair<sup>1</sup> hearing to determine if Petitioner Davis should undergo a mental evaluation for competency and criminal responsibility because Petitioner had a history of mental illness and because he was charged with the murder of his mother by burning?

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<sup>1</sup> State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

## STATEMENT

On January 1, 2013, Petitioner Stanley Davis was living in a camper behind the residence of his mother in Anderson County. The night before, Davis and his mother became involved in a dispute. The next day, January 1, his mother ran to her neighbor's and asked her neighbor to call 911 as her son "had set her on fire." The mother spoke with the police when they arrived although forty percent of her body was burned. The mother was sent to the Augusta Burn Center. App. 11, ll. 19 – App. 12, ll. 21.

After the incident with his mother, Petitioner Davis went to see his wife and eight year old daughter. He allegedly told them that he was going to kill his brother, Anthony, who lived in Greenville. When Davis saw his brother, his brother shot Petitioner Davis who was sent to the hospital with "non-life-threatening" injuries. Davis supposedly told a nurse at the hospital that he "set" his mother on fire. App. 13, ll. 1 – 16.

His mother remained at the Augusta Burn Center where she received treatment until February 19, 2013 when she died. App. 12, ll. 15-21.

On May 21, 2013, the Anderson County Grand Jury indicted Petitioner Davis on the charge of murder. App. 77-App. 78. On October 2, 2013, Davis appeared before the Honorable R. Lawton McIntosh and entered a guilty plea to murder as indicted. Davis was represented by Herverly Young, and the state was represented by Catherine T. Huey. App. 1.

At his guilty plea Petitioner Davis admitted to the judge that he committed these acts against his mother. App. 13, ll. 1 – 3. The judge asked plea counsel if a McNaughton or a criminal responsibility evaluation was done. Plea counsel answered no. The judge asked: "No need to?" Plea counsel responded: "No, sir." App. 13, ll. 17 – 25.

The plea judge accepted the state's recommendation for a sentence of thirty years and sentenced Davis to thirty years. App. 3, ll. 1 – 8; App. 22, ll. 1 – 14.

Petitioner Davis did not appeal his conviction nor sentence. App. 71.

On May 14, 2014, Davis filed an application for post-conviction relief (PCR). The state filed a return on October 30, 2014. App. 70. An evidentiary hearing was held on September 2, 2015 before the Honorable Frank R. Addy. Petitioner Davis was represented by Hugh Welborn, and the state was represented by Joshua Thomas. App. 35.

At the PCR hearing, PCR counsel told the court that the only allegation Davis was pursuing was ineffective assistance of counsel for failing to request a Blair hearing and investigating Davis' mental health issues. App. 37, ll. 1 – 25.

Petitioner Davis testified and agreed that his allegations were that his plea counsel was ineffective because he failed to investigate his history of mental illness and failed to hold a Blair hearing or competency hearing. App. 38, ll. 6 – 23. Davis said he was on “all kinds of medicine” at his guilty plea. He had told his attorney in the beginning that he wanted to commit suicide. He said he should never have pled guilty because he and his mother were at fault in what happened. App. 39, ll. 7 – 25.

Davis said the fact that he killed his mother and the manner in which he did it “should have made it more to get a mental evaluation in itself.” He said his mother died of multiple organ failure from third-degree burns. App. 43, ll. 2 – 23. Davis said his attorney told him he would have to lie at his guilty plea that he murdered his mother. Davis claimed that he told his attorney: “I'm not going to lie and say that I murdered my mama when I didn't; this was an accident.” He got the hose and put out the fire on her. App. 44, ll. 4 – 25. He told his attorney it

was an accident. He asked the PCR court to grant him a new trial. App. 47, ll 1 – 24. He told the PCR court that his plea was “involuntarily given.”

Plea counsel testified that Petitioner Davis explained to him that the incident was an accident. Davis told him that he was working on a lawnmower and had drained the gasoline into a bucket. His mother came out and they got into a verbal altercation. They began “tussling” over the gasoline bucket and gasoline spilled on both of them. A fire started somehow and both were burned. His mother however, was “engulfed” in flames. Davis got the water hose to put out the fire on his mother. Then he went to his brother’s house in Greenville where his brother shot Davis. Davis was sent to Patrick B. Harris hospital. App. 54, ll. 12 – App. 55, ll. 24.

Plea counsel said his defense at trial was going to be that it was an accident. App. 56, ll 4 – 9. Counsel said he never had Davis mentally evaluated because he saw no issues concerning Davis’ ability to stand trial or to assist in his case. Davis always seemed to understand what was going on. Counsel obtained Davis’ mental health records and retained Dr. Donna Schwartz-Watts to review those records to determine if there were any issues he could use for mitigation. After this, he still had no concerns about Davis’ competency nor criminal responsibility. App. 57, ll. 6 – App. 58, ll. 17.

Counsel admitted that Davis did “waiver” between a guilty plea and going to trial. He finally told counsel to see what offer the solicitor would make so that “he could just go to prison and get this behind him.” App. 58, ll. 18 – App. 59, ll. 7. Counsel denied telling Davis he had to lie at his guilty plea. Counsel did tell him that he would have to admit the allegations he was pleading guilty to. App. 59, ll. 11 – 25.

Plea counsel on cross-examination listed the diagnoses given to Davis as: 1) personality disorder borderline; 2) depressive disorder non-specific; 3) substance abuse; 4) family problems. App. 65, ll.13 – App. 66, ll. 1.

PCR counsel argued in his closing remarks that Petitioner Davis should have had a competency hearing and asked the PCR court for that ruling. App. 67, ll. 2 – 15.

The PCR judge found that plea counsel’s testimony was credible but found that Davis’ conflicting testimony was not credible. App. 71. The order provided that Davis did not meet his burden of proof that counsel’s investigation of Davis’ mental health history was not reasonable under the circumstances of Davis’ case. That allegation was denied and dismissed. App. 73.

The judge ruled that Davis failed to prove that plea counsel was ineffective for not requesting a Blair hearing. The judge ruled that based on the evidence at the evidentiary hearing, plea counsel “thoroughly investigated Davis’ mental health history” as counsel had the mental health records reviewed by an outside expert who indicated that no further testing was needed. The judge ruled that Davis failed to show any prejudice he suffered as a result of counsel’s not requesting a competency hearing. App. 73- App. 74.

The PCR judge denied Davis’ PCR application and dismissed it with prejudice. App. 76. Davis filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in not finding plea counsel ineffective for failing to insure that Petitioner's guilty plea was voluntarily entered because plea counsel failed to request a Blair hearing to determine if Petitioner Davis should undergo a mental evaluation for competency and criminal responsibility because Petitioner had a history of mental illness and because he was charged with the murder of his mother by burning.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result". Strickland v. Washington, 466 U.S.668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989). A reasonable probability is one sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). The applicant must show that there is a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006); Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with certain certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege”. State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give the defendant an explanation of the defendant’s waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

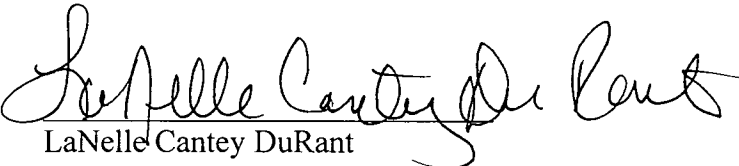
In State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), the Supreme Court held:

Evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on his competence to stand trial are all relevant in determining whether the accused is entitled to competency to stand trial hearing, but even one of these factors, standing alone, may be sufficient in some circumstances.

The PCR court erred in finding that plea counsel was not ineffective for not insuring that Davis’ plea was entered voluntarily and knowingly. Davis, like Blair, was accused of killing his mother figure. Davis had been hospitalized for mental health issues in the past. His alleged burning of his mother was an irrational act and was sufficient in itself to request a mental evaluation and Blair hearing.

CONCLUSION

Based on the above, certiorari should be granted, petitioner's conviction and sentence reversed, and the case remanded for a new trial.

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L".

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of October, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Anderson County

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PETITION TO BE RELIEVED AS COUNSEL

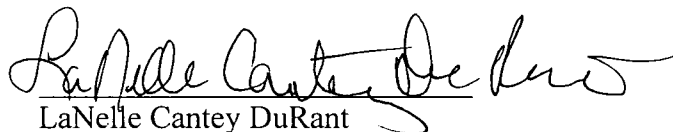
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Counsel for Stanley S. Davis states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before the Honorable Frank R. Addy, which was held on September 2, 2015 (Evidentiary Hearing), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Stanley S. Davis.

Respectfully Submitted,



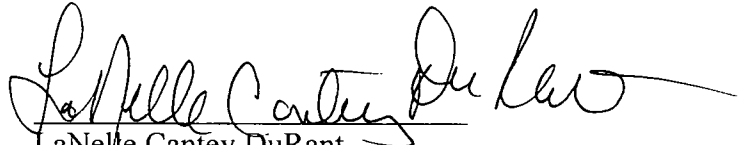
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of October, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

  
LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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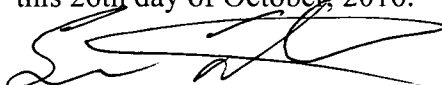
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CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johanna C. Valenzuela, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Stanley S. Davis, #277744, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 26th day of October, 2016.



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 26th day of October, 2016.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.